

Madison County Farm & Forest Protection Plan: REVISED 6/10/08

A.I-101. Purpose

1. Establishing a program by which the County can acquire permanent conservation easements voluntarily offered by owners as one means of assuring that the County's resources are protected and efficiently used;
2. Preserving the farm and forest land base by minimizing the fragmentation of working farms and forestland and by providing family farms an alternative to developing their land to get the "highest economic value";
3. Conserving and protecting the County's water resources;
4. Protecting and enhancing the County's rural character and quality of life;
5. Promoting agritainment and agricultural support services such as education, animal care; wineries; services such as haymaking, brush hogging, crop storage, hauling, fencing, barn construction; direct marketing of products produced on-site, equestrian facilities, farm co-ops; farm based tourism events; farm and wayside markets; farm machinery repair; commercial nurseries; petting zoos; stables; and similar uses that allow for agricultural education, recreation, entertainment and tourism in conjunction with on-going agricultural activity on-site.

The Farm & Forest Protection Program (hereafter referred to as the "FFPP") shall be available for lands in the County in a conservation or agricultural zoning district, except those lands under the ownership or control of the United States of America, the Commonwealth of Virginia, or an agency or instrumentality thereof. Any conservation easement acquired under the FFPP shall be voluntarily offered by the owner.

Sec. A.I-102. Definitions and construction.

A. Definitions;

The following definitions shall apply in the interpretation and implementation of the FFPP:

(1) **Conservation easement.** The term "conservation easement" means a permanent nonpossessory interest in one or more parcels of one or more qualified easement holders under section A.I109(E), whether acquired under the Open-Space Land Act (Virginia Code § 10.1-1700 et seq.), or otherwise, and whether the easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase pursuant to the FFP program, imposing limitations or affirmative obligations for the purpose of retaining or protecting natural or open-space values of the parcel or parcels, assuring availability for agricultural, forestal, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of the parcel or parcels.

(2) **Division rights.** The term "division rights" means the number of parcels into which a tax parcel could be divided under:

(i) the limitations of Subdivision in Conservation, C-1 and Agricultural, A-1 Districts; Section 4-1-5 of the Subdivision Ordinance for Madison County as adopted March 29, 1974 and including all subsequent revisions and amendments.

(ii) the Area regulations for C-1 and A-1 Districts; section 3-3 of the Madison County Zoning Ordinance as adopted March 29, 1974 and including all subsequent revisions and amendments.

(iii) any existing easements, covenants or restrictions which restrict lot size, number of lots or density.

(3) **Forced sale.** The term "forced sale" means a sale of a parcel with unused development rights in a manner prescribed by law that is conducted under a judgment, order or the supervision of a court of competent jurisdiction, other than a sale arising from a partition action; a sale resulting from foreclosure under the laws of the Commonwealth of Virginia; or, a sale that is not the voluntary act of the owner but is compelled in order to satisfy a debt evidenced by a mortgage, judgment, or a tax lien.

(4) **Hardship.** The term "hardship" means an economic hardship, other than a circumstance causing a forced sale, experienced by the owner of the parcel so as to compel him or her to place a parcel with unused development rights for sale or to use such development rights.

(5) **Immediate family.** The term "immediate family" means an owner's spouse and his or her offspring residing in the same household as the owner of the parcel.

(6) **Owner.** The term "owner" means the owner or owners of the freehold interest

(7) **Program administrator.** The term "program administrator" means the person designated in Section A.I-103.

(8) **Parcel.** The term "parcel" means a lot or tract of land, with an assigned Tax Map and ID number, lawfully recorded in the office of the Clerk of the Circuit Court of the County of Madison.

(9) **Retained division rights.** The term "retained division rights" means the number of parcels into which a parcel subject to a conservation easement may be divided as provided in section A.I-109(A).

B. Construction.

Because a conservation easement may contain one or more parcels, for purposes of the FPPP the term "property" shall include all parcels covered by, or proposed to be covered by, the conservation easement.

Sec. A.I-103. Designation of program administrator; powers and duties.

A. Designation. The County Board of Supervisors shall designate a program administrator.

B. Powers and duties. The program administrator, or his designee, shall administer the FFPP and shall have the powers and duties to:

1. Establish reasonable and standard procedures and forms for the proper administration and implementation of the FFPP. Upon receiving an application the program administrator shall obtain a title examination. He shall also obtain a survey if necessary to evaluate the property. An application may be rejected by the program administrator, after consultation with the Farm and Forest Protection Committee (established in Sec. A.I-104.), if the survey expense will be too large in relation to the expected benefit to the County, or if the title examination shows title deficiencies which the Owner is unlikely to be able to cure, or lien holders who are unlikely to subordinate to the proposed easement.

2. Promote the program, in cooperation with the Farm and Forest Protection committee, by providing educational materials to the public and conducting informational meetings.

3. Investigate and pursue state, federal and other programs available to provide additional public and private resources to fund the program and to maximize private participation.

4. Evaluate all applications to determine their eligibility and their ranking score, rank applications based on their ranking score, and make recommendations thereon to the Farm and Forest Protection committee.

5. Consult with the zoning administrator to determine the number of division rights existing on each parcel subject to an application, prior to the proposed conservation easement and after the proposed conservation easement.

6. Coordinate the preparation of appraisals.

7. Provide staff support to the Farm and Forest Protection committee and the Board of Supervisors.

8. Provide educational materials to the public regarding other land protection programs.

9. For each conservation easement, assure that the terms and conditions of the deed of easement are monitored and complied with by coordinating a monitoring program with each easement holder, and if the other easement holders are either unable or unwilling to do so, monitor and assure compliance with the terms and conditions of the deed of easement.

Sec. A.I-104. Farm and Forest Protection committee established; powers and duties.

A. Establishment. The Farm and Forest Protection committee is hereby established, as follows:

1. The Farm and Forest Protection committee (hereafter referred to as the FFP committee) shall consist of seven (7) members appointed by the Board of Supervisors, and shall include among their number the Program Administrator who shall be a non-voting member. Each voting member shall be a resident of Madison County. The FFP committee should, but is not required to, be comprised of members who are knowledgeable in the fields of farming and forestry, conservation, conservation biology, real estate and/or rural land appraisal, and may also include members of conservation easement holding agencies and conservation organizations.

2. The non-voting member(s) of the FFP committee shall serve at the pleasure of the Board of Supervisors. The initial term of three (3) of the voting members shall be for two (2) years. The initial term of the remaining four (4) voting members and for all members after the initial term shall be for four (4) years.

3. The members of the FFP committee shall serve without pay, but the Board of Supervisors may, in its discretion, reimburse each member for actual and necessary expenses incurred in the performance of his duties.

4. The FFP committee shall elect a chairman, vice-chairman and secretary at its first meeting each calendar year. The secretary need not be a member of the committee.

B. Powers and duties. The FFP committee shall have the powers and duties to:

1. Promote the program, in cooperation with the program administrator, by providing educational materials to the public and conducting informational meetings.

2. Review the ranking of applications recommended by the program administrator, and recommend to the Board of Supervisors which conservation easements should be purchased.

3. Periodically review the program's regulations, guidelines, administrative procedures and promotion and recommend to the Board of Supervisors or the program administrator, as appropriate, any changes needed to maintain the program's consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.

Sec. A.I-105. Eligibility criteria.

In order for a property to be eligible for a conservation easement, it must meet the following criteria:

A. the allowed uses of the property under the conservation easement must be consistent with the comprehensive plan; and

B. the property must be in either an Agricultural Zone or a Conservation Zone; and

C. the proposed terms of the conservation deed of easement must be consistent with the minimum terms and conditions set forth in section A.I-107; and

D. the property shall obtain at least fifty (50) points under the ranking criteria set forth in section A.I-106; and

E. the property must have division rights under current Madison County Subdivision and Zoning Ordinances.

Sec. A.I-106. Ranking criteria.

In order to effectuate the purposes of the FFPP, properties for which conservation easement applications have been received shall be evaluated by utilizing a Ranking System. The initial Ranking System and changes to the Ranking System shall be approved by the Board of Supervisors. The Ranking System may be used to prioritize the acquisition of conservation easements. Points are assigned based on the Ranking System which shall be entitled Madison County Farm and Forest Protection Program Worksheet, dated _____ and amended (if applicable) on _____ date(s).

Sec. A.I-107. Easement terms and conditions.

Each conservation easement shall conform to the requirements of the Open-Space Land Act of 1966 (Virginia Code §10.1-1700 et seq.). The deed of easement shall be in a form approved by the County Attorney, and shall contain, at a minimum, the following provisions:

A. Restriction on division.

The property shall be restricted from division as follows:

- (i) if the property is less than one hundred fifty (150) acres, it may not be divided;
- (ii) if the property is one hundred fifty(150) acres or larger it may be subdivided so as to maintain an average lot size of at least seventy-five (75) acres (e.g., an eight hundred fifty (850) acre property may be divided into as many as eleven (11) parcels, assuming there are sufficient tax parcels to allow such a division). These restrictions shall be perpetual in nature, unless a more restrictive easement can be placed on the property, and run with the land so to be binding on all present and future owners of the property under easement.

B. No buy-back option.

The owner shall not have the option to reacquire any property rights relinquished under the conservation easement.

C. Other restrictions.

The eased property also shall be subject to the following standard restrictions pertaining to uses and activities allowed on the property. These standard restrictions shall be delineated in the deed of easement and shall include, but not necessarily be limited to, restrictions prohibiting:

- (i) the accumulation of trash and junk;
- (ii) the display of billboards, signs (unless specifically permitted) and advertisements;
- (iii) forest harvest without an approved management plan;
- (iv) grading, mining, blasting or earth removal;
- (v) unlimited number and size of residential outbuildings and farm buildings or structures;
- (vi) the conduct of industrial or commercial activities on the property; and
- (vii) failure to monitor the easement.

E. Designation of easement holders.

The County may be the sole easement holder, or it may include one or more other public bodies, as defined in Virginia Code §10.1-1700, as co-holder(s). The public body or bodies who may be designated by the board shall include, but not be limited to, the Virginia Outdoors Foundation.

Sec. A.I-108. Application and evaluation procedure.

Each application for a conservation easement shall be processed as follows:

A. Application materials to be provided to owner.

The application materials provided by the program administrator to an owner shall include, at a minimum, a standard application form, a sample deed of easement, a copy of these rules and information about the FFPP. The owner shall be advised to seek the advice of his or her own attorney as to any questions about the legal effect of any proposed easement; the County Attorney cannot provide legal advice to the owner.

B. Application form.

Each application shall be submitted on a standard form prepared by the program administrator. The application form shall require, at a minimum, that the owner:

(i) provide the name of all owners of the property, the address of each owner, the acreage of the parcel(s), the Madison County tax map and parcel number(s), the zoning designation of the parcel(s), and permission for the program administrator and FFP committee members, and such other persons as may be designated by them, such as surveyors, appraisers and consultants, to enter the property after reasonable notice to the owner to evaluate the property; and

(ii) state his adjusted gross income for the three (3) prior tax years and provide a copy of the Internal Revenue Service Form 1040 Schedule F's for the three prior tax years if points are claimed as a family farm under Sec. A. I-106.A.1.a. or b..

(iii) The application form shall also include a space for an owner to indicate that he volunteers to have the property be subject to greater restrictions than those contained in the standard sample deed of easement, and to delineate those voluntary, additional restrictions. The owner shall attach the most recent plat of survey of the property, if one is available.

C. Additional application information required by program administrator.

The program administrator may require an owner to provide additional information deemed necessary to determine:

(i) whether the proposed easement is eligible for purchase; and

(ii) the purchase price of the easement.

D. Submittal of application.

Applications shall be submitted to the program administrator. An application may be submitted at any time. However, applications received after July 1 shall be

evaluated in the following calendar year. The applications shall be signed by all owners of the property.

E. Evaluation by program administrator.

The program administrator shall evaluate each application received and determine within thirty (30) days whether the application is complete. If the application is incomplete, the program administrator shall inform the owner in writing of the information that must be submitted in order for the application to be deemed complete. All additional information requested shall be submitted not later July 15 in order to be considered. When an application is deemed complete, the program administrator shall determine whether the parcel satisfies the eligibility criteria set forth in section A.I-105 and, if it does, shall determine the number of points to be attributed to the parcel by applying the criteria set forth in section A.I-106. The program administrator shall then rank each property scoring at least fifty (50) points, with the parcel scoring the most points being the highest ranked and descending there from. The program administrator should submit the list of ranked properties to the FFP committee by August 1.

F. Evaluation and ranking by FFP committee.

The FFP committee shall review the list of ranked properties submitted by the program administrator and shall rank the properties in the order of priority it recommends the easements shall be purchased. The committee should forward to the Board of Supervisors by September 1 its recommendation of which conservation easements should be purchased.

G. Evaluation and ranking by Board of Supervisors.

The Board of Supervisors shall review the list of ranked properties submitted by the FFP committee and identify on which properties it desires conservation easements. The board shall then rank those properties on which it will seek to purchase conservation easements that year. Nothing in this appendix shall obligate the board to purchase a conservation easement on any property that meets the minimum number of qualifying points.

H. Requirements and deadlines may be waived.

Any requirement or deadline set forth in this appendix may be waived by the Board of Supervisors if, for good cause, it is shown that exigent circumstances exist to warrant consideration of an otherwise untimely application, or it is shown that the requirements unreasonably restrict the purchase of an easement. Under these circumstances, the board may purchase a conservation easement at any time it deems necessary and subject to only those requirements it deems appropriate.

I. Re-application.

An owner whose property is not selected for purchase of a conservation easement may reapply in any future year.

Sec. A.I-109. Purchase of conservation easement.

Each conservation easement shall be purchased as follows:

A. Identification of initial pool.

From the list of applications received under section A.I-108(D), the Board of Supervisors shall designate the initial pool of properties identified for conservation easements to be purchased. The purchase price may be supplemented by non-County funding. The size of the pool shall be based upon the funds available for easement purchases in the current fiscal year and the purchase price of each conservation easement in the pool established under section A.I-108

B.Determining purchase price.

The purchase price of a conservation easement shall be calculated by a qualified appraisal of the property, as defined in SS 170 (f) (11) (E) (i) of the IRC, of the qualified easement. The appraisal must be prepared by a qualified appraiser, as defined in SS 170 (f) (11) (E) (ii) of the IRC, who is licensed in Virginia pursuant to VA code SS 54.1-2011. The application shall include the affidavit by the appraiser required by subsection C of Va. Code 58.1-512.1. The appraisal must be completed within one hundred twenty (120) days of the offer to sell.

C. Invitation to offer to sell.

The Board of Supervisors shall invite the owner of each property included in the initial pool to submit an offer to sell to the County a conservation easement on that property for the purchase price, and/or to donate to the County the balance of the fair market value of the conservation easement, subject to the terms and conditions of a proposed deed of easement. The purchase price shall not be subject to negotiation. The invitation shall be in writing and shall include the purchase price, the proposed deed of easement, and the date by which a written offer must be received by the program administrator in order for it to be considered.

D. Offer to sell.

Each owner who desires to sell and/or donate a conservation easement shall submit a written offer that must be received by the program administrator by the date contained in the invitation to offer to sell. The offer should include a statement substantially stating the following: "(The owner) offers to sell and/or donate a conservation easement to the County of Madison, Virginia for the sum of (purchase price), subject to the terms and conditions set forth in the proposed deed of easement enclosed with the invitation to offer to sell."

Nothing in this appendix shall compel an owner to submit an offer to sell. The usual, customary payment shall be in a lump sum, paid within ninety days, but alternate terms may be negotiated by agreement of all parties.

E. Acceptance.

An offer to sell a conservation easement shall be accepted by the Board of Supervisors only in writing, and only following approval by majority vote of the Board at a public meeting; a public hearing is not required but may be held in the discretion of the Board.

Notwithstanding any other provision of these rules, nothing shall bind the County to purchase an easement unless and until the said majority vote is obtained. An offer shall not be accepted by the Board if the proposed easement would be inconsistent with the policies and goals of the comprehensive plan at the time the offer is received. Once an offer is accepted the Owner and the County shall be in a legally binding contract, and should the Owner thereafter default, he/she shall be liable to the County for all costs incurred by the County to evaluate the property from the time the application was filed, including survey costs, appraisals, title examination and legal fees.

F. Easement established.

A conservation easement shall be established when the owner and an authorized representative of the holder of the easement have each signed the deed of easement and such deed is recorded in the office of the Clerk of the Circuit Court of the County of Madison. A single conservation easement may be established for more than one parcel under the same ownership. It shall be the Owner's responsibility to convey title free and clear of all liens, defects and encumbrances which could adversely affect the easement. The form of the deed and title to the property must be approved by the County Attorney, and the County shall not be required to purchase an easement unless such approvals are obtained.

**G. Offers not made; offers not accepted;
invitation to other owners.**

If an owner invited to submit an offer elects not to do so, or if his offer to sell is not accepted by the Board of Supervisors, then the board may send an invitation to offer to sell to the owner of the next highest ranked property remaining on the list of properties identified in section A.I-108(E).

H. Costs.

If the Board of Supervisors accepts an offer to sell, the County may pay all costs, including environmental site assessments, surveys, recording costs, grantor's tax, if any, and other charges associated with closing. Provided, the County shall not pay fees incurred for independent appraisals, legal, financial, or other advice obtained by the Owner, site assessments, surveys, recording costs, grantor's tax, if any, or fees in connection with the release and subordination of liens in connection to the easement purchased by the county.

I. Reapplication.

An owner who fails to submit an offer to sell or whose offer to sell was not accepted may reapply in any future year.

Sec. A.I-110. Program funding.

The FFPP may be funded annually by the Board of Supervisors in the County budget or by special appropriation. Its only dedicated revenue source shall be the funds paid to the County as a result of roll-back taxes realized from parcels that are withdrawn from the Use-Value Taxation program. The County shall endeavor to seek funds from federal, state and private sources to effectuate the purposes of the FFPP.

Sec. A.I-111. Program non-exclusivity.

The FFPP is a non-exclusive means by which the County may purchase conservation easements or control land use and development, or by which landowners may establish conservation easements and other self-imposed limitations on land use or development. These rules shall not be construed in any way as a limitation upon the County's authority to acquire land for public purposes.